

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOHN TURNER,

Case No. 2:13-cv-01954-MMD-GWF

Plaintiff,

v.

SELF-HELP CENTER, et al.,

ORDER

Defendants.

This action is a closed *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. By order filed January 9, 2014, the Court dismissed this action with prejudice, because the complaint failed to state a claim and could not be cured through amendment. (Dkt. no. 6.) Judgment was entered that same date. (Dkt. no. 8.) Plaintiff has filed three (3) motions for reconsideration of this Court's order of dismissal. (Dkt. nos. 9, 10, 11.)

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence, that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct by an opposing party; (4) the judgment is void; (5) the

1 judgment has been satisfied, released or discharged; it is based on an
2 earlier judgment that has been reversed or vacated; or applying it
3 prospectively is no longer equitable; or (6) any other reason that justifies
4 relief.

5 Motions to reconsider are generally left to the discretion of the trial court. See *Combs v.*
6 *Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a
7 motion to reconsider, a party must set forth facts or law of a strongly convincing nature
8 to induce the court to reverse its prior decision. See *Kern-Tulare Water Dist. v. City of*
9 *Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part and rev'd in part on*
10 *other grounds* 828 F.2d 514 (9th Cir. 1987).

11 Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to
12 alter or amend a judgment shall be filed no later than 28 days after entry of the
13 judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should not be granted,
14 absent highly unusual circumstances, unless the district court is presented with newly
15 discovered evidence, committed clear error, or if there is an intervening change in the
16 controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell*
17 *v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). Federal courts have determined that
18 there are four grounds for granting a Rule 59(e) motion: (1) the motion is necessary to
19 correct manifest errors of law or fact upon which the judgment is based; (2) the moving
20 party presents newly discovered or previously unavailable evidence; (3) the motion is
21 necessary to prevent manifest injustice; or (4) there is an intervening change in
22 controlling law. *Turner v. Burlington Northern Santa Fe R. Co.*, 338 F.3d 1058 (9th Cir.
23 2003).

24 In the instant case, this Court properly entered judgment dismissing this action in
25 the order filed January 9, 2014. (Dkt. no. 6.) This Court properly reviewed and
26 dismissed this action for failure to state a cognizable claim, pursuant to 28 U.S.C. §
27 1915A(b)(1),(2) and 28 U.S.C. § 1915(e)(2). The Court dismissed plaintiff's action for
28 damages against the Self-Help Center of the Eighth Judicial District Court for the State
of Nevada, the Regional Justice Center, and the State of Nevada because states, and

1 arms of the state, are not persons for purposes of § 1983 actions. See *Arizonans for*
2 *Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v. Mich. Dep't of State Police*,
3 491 U.S. 58, 71 (1989). Moreover, Eleventh Amendment immunity bars § 1983 actions
4 for damages against state agencies, as well as those where the state itself is named as
5 a defendant, and where state officials are sued in their official capacity. *P.R. Aqueduct*
6 & *Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Taylor v. List*, 880
7 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff also claimed a denial of access to the courts,
8 alleging that the Self-Help Center refused to assist him with small claims complaints.
9 The right to access the courts is limited to direct criminal appeals, habeas corpus
10 proceedings, and civil rights actions challenging conditions of confinement. *Lewis v.*
11 *Casey*, 518 U.S. 343, 354-55 (1996). This Court ruled that because plaintiff alleged that
12 the Self-Help Center refused to assist him with small claims complaints, he failed to
13 state a claim for denial of access to the courts. The Court further found that, because
14 the deficiencies of the complaint could not be cured through further amendment, the
15 entire complaint was dismissed with prejudice. (Dkt. no. 6.)

16 In his motions for reconsideration, plaintiff has not identified any mistake,
17 intervening change in controlling law, or other factor that would require vacating the
18 judgment. Plaintiff has not shown that manifest injustice resulted from dismissal of the
19 action. Plaintiff also has not presented newly discovered or previously unavailable
20 evidence. Plaintiff has failed to make an adequate showing under either Rule 59(e) or
21 Rule 60(b) to justify granting his motions for reconsideration or otherwise altering the
22 judgment of this Court.

23 It is therefore ordered that plaintiff's motions for reconsideration (dkt. nos. 9, 10,
24 11) are denied.

25 DATED THIS 24th day of February 2014.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE